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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,294	09/05/2006	Paul Kelley	29953-227807	5042
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VENABLE LLP				
P.O. BOX 34385				
WASHINGTON, DC 20043-9998				
EXAMINER				
TAWFIK, SAMEH				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,294

Applicant(s)

KELLEY ET AL.

Examiner

Sameh H. Tawfik

Art Unit

3721

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 9, 10, 12-16, 19, 21, 23-27 and 30-54 is/are pending in the application.
- 4a) Of the above claim(s) 13-16, 19, 21, 23-27 and 30-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-5, 9, 10 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 9, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Copland et al. (U.S. Patent No. 4,684,025).

Copland discloses a system for processing a pre-formed plastic container comprising (via pre formed container 30); means for filling a rigid container (Fig. 1; via 21; rigid cups after cooling 30; column 4, lines 33-37); means for capping (via 52 covering the container); means for transporting through the production line (it is inherent that the formed container is moving through the production line via some-type of driving means); means for supporting during the transportation (via roller 16 and machine frame); means for cooling the container body of the filled pre-formed container (Figs. 1 and 2; via atmospheric temperature cooling the pre-formed cups 30); means for pushing a projection extending from the cooled container (Figs. 2-7; via uneven shaped/projection container 30; shaping/pusher die 64).

Copland does not disclose hot filling means to fill the container with hot product. However, the examiner takes an official notice that such hot filling means is old and well known in the art and it seems that Copland system is capable of using such hot filling means.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted Copland's filling means by using one of hot filling means, as a matter of engineering design choice, in order to fill the formed cups with holt products.

Regarding claim 2: it is inherent while the hot container being cooled (via atmospheric temperature) some kind of vacuuming will be caused within the container due to the different between the inner and outer temperatures.

Regarding claim 5: the container body is conveyed by its neck during the filling and capping (Fig. 1; via the container conveyed through the filling and capping stations); note the upper portion of the container could be consider as the neck.

Regarding claim 9: the means for pushing the projection and it's panels extending from the container body into the interior of the container body (Figs. 5 and 6).

Regarding claim 10: the container body has a grip portion free of structural geometry (Fig. 2; via upper portion of the container).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Copland et al. (U.S. Patent No. 4,684,025) in view of Hiroaki (Japanese Publication No. 63-189224).

Copland does not disclose the use of blow molding to form the container. However, Hiroaki discloses a similar formed container with the use of blow molding with means for inverting the projection extending from the container body into the interior of the container prior to the filling (Figs. 2-7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted Copland's forming station with the use of blow molding station, as suggested by Hiroaki, in order to simplify the forming step and come up with different shape of the container.

Alternatively, the examiner takes an official notice that the use of blow molding to form plastic containers is old, well known, and available in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted Copland's forming station with the use of blow molding station, as a matter of engineering design choice, to simplify the forming step and come up with different shape of the container.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is 571-272-4470. The examiner can normally be reached on Tuesday - Friday from 9:00 AM to 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sameh H. Tawfik/
Primary Examiner, Art Unit 3721